IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

Bail Appl..No. 4501 of 2007()

AGAINST THE ORDER DATED 11/07/2007 IN & 862/07 IN CRLMP.855/2007 of DISTRICT COURT, KALPETTA
CRIME NO.278/07 OF MANANTHAVADY POLICE STATION

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PETITIONER/ACCUSED NO.1 TO 3

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1. C.S.VINOD, AGED 34 YEARS,
   S/O SOMANATHAN, CHENNAMCHIRA VEEDU,
   KOILERY P.O., PAYYAMPILLY,
   MANANTHAVADY, WAYANAD DISTRICT.

2. SHAJU, AGED 36 YEARS,
   S/O PEETHAMBARAN, THEKKEKARA HOUSE,
   KOILERY P.O., PAYYAMPILLY, MANANTHAVADY,
   WAYANAD DISTRICT.

3. JOJI, AGED 30 YEARS,
   KOLLASSERY HOUSE, KOILERY P.O.,
   PAYYAMPILLY, MANANTHAVADY, WAYANAD DISTRICT.

BY ADV. SRI.M.B.PRAJITH

RESPONDENTS: COMPLAINANT

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1. THE STATION HOUSE OFFICER,
   MANANTHAVADY POLICE STATION,
   (CR.NO.278/2007), MANANTHAVADY.

2. STATE- REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 4501 OF 2007

Dated this the 26th day of July, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 to 3. They face allegations along with the co-accused under Sec.304 of the IPC. The crux of the allegations against the petitioners is that they physically assaulted the deceased. The deceased was an insane person who was brought to the hospital for treatment. He had escaped from the hospital and had allegedly misbehaved to the petitioners. The deceased was in an aggressive mood and the petitioners had deterred him allegedly by beating him. The deceased had run away. He ultimately got drowned in water and eventually met with his death. Subsequently, allegations have been raised against the petitioners and a host of others who had roles in deterring the deceased person. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that, by no stretch of imagination, can it be held that the petitioners had any intention, even accepting the entire case of the prosecution to cause the death of the deceased. The allegation will also only reveal that the petitioners, who did not know the deceased who was behaving in aggressive and unruly manner, only tried to deter him. Even if the allegations were accepted in toto, it will not reveal any offence beyond the one punishable under Sec.323 of the IPC. Beating with hands is the allegation raised. A serious injury is allegedly suffered on the cheek. Even assuming the worst, that can constitute only an offence under Sec.325 of the IPC. In these circumstances, the allegation under Sec.304 of the IPC has been unnecessarily included. It cannot at all be assumed that the petitioners caused the death of the deceased. The inclusion of that would compel the petitioners to remain in custody unnecessarily as the offence being triable by a Court of Session, the Magistrate is not likely to grant bail. In these circumstances, this is a fit case to invoke the powers under Sec.438 of the Cr.P.C., submits the learned counsel for the petitioners.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor points out that there was no overt

acts committed by the deceased against the petitioners. At worst he was only behaving in an unruly manner because of his illness and the conduct of the petitioners is not justified.

4. I have considered all the relevant inputs. Notwithstanding the opposition by the learned Public Prosecutor, I am satisfied that this is a fit case where the petitioners can be granted anticipatory bail in the circumstances to which I have already made brief reference above.

5. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioners shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 2/8/07. They shall be released on regular bail on their executing bonds for Rs.25,000/- each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 3/8/07 and 4/8/07 and thereafter on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months. Subsequently, they shall so make themselves available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if those directions were not issued at all;

(iv) If the petitioners were arrested prior to their surrender on 2/8/07 as directed in clause (i) above, they shall be released on their executing bonds for Rs.25,000/- each without any sureties undertaking to appear before the learned Magistrate on 2/8/07.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge